

Minutes

Bar Harbor Town Council

April 1, 2008

- I. **CALL TO ORDER** – 7:05 P.M. – In attendance were: Councilors Ruth Eveland, Robert Garland, Paul Paradis, Julia Schloss, Greg Veilleux, Robert Jordan, Jr.; and Town Manager Dana Reed.
 - A. **Excused Absence(s)** – Mr. Jordan, with second by Ms. Schloss, moved to excuse Ken Smith as provided by Town Charter section C-12.B(1)(d). Motion passed 6-0.
- II. **APPROVAL OF MINUTES**
 - A. **March 18, 2008 – Regular Meeting**
 - B. **March 25, 2008 – Special Meeting**

Mr. Paradis, with second by Ms. Schloss, moved to approve the minutes of March 18, 2008 regular meeting and March 25, 2008 special meeting as presented. Motion passed 6-0.
- III. **ADOPTION OF AGENDA** – Mr. Paradis, with second by Mr. Veilleux, moved to adopt the agenda as presented with the exception of tabling item VI (B), West Street, until the April 15, 2008 meeting. Motion passed 6-0.
- IV. **FINANCIAL STATEMENTS** – (Customarily presented at the second meeting each month)
- V. **PUBLIC HEARINGS:**
 - A. **Special Amusement Permits:**
 1. **Fish House Grill, One West Street, for a Class 3a, three or more musicians with mechanical amplification, as submitted by Fishmaine, Jim Bond. (Renewal)** – There being no comments, Mr. Paradis, with second by Ms. Schloss, moved to approve the special amusement permit renewal for Fish House Grill as requested. Motion passed 6-0.
 2. **The Harborside Hotel and Marina, 55 West Street, for a Class 3ad, three or more musicians, with mechanical amplification and dancing, as submitted by Golden Anchor, LC, Richard Ade. (Renewal)** – There being no comments, Mr. Paradis, with second by Ms. Schloss, moved to approve the special amusement permit renewal for the Harborside Hotel and Marina as requested. Motion passed 6-0.
 3. **Holiday Inn Bar Harbor Regency, 123 Eden Street, for a Class 3ad, three or more musicians, with mechanical amplification and dancing, as submitted by Bar Harbor Regency Hotel, Inc., Richard Ade. (Renewal)** – There were no comments. Mr. Paradis, with sec-

ond by Ms. Schloss, moved to approve the special amusement permit renewal for Holiday Inn Bar Harbor Regency as requested. Motion passed 6-0.

4. **Bar Harbor Blues Authority, 6 Pleasant Street, for a Class 3ad, three or more musicians, with mechanical amplification and dancing, as submitted by Burwaldo's, Inc., J. T. Burton, III. (Renewal)** – There were no comments. Mr. Paradis, with second by Mr. Jordan, moved to approve the special amusement permit renewal for Bar Harbor Blues Authority as requested. Motion passed 6-0.
5. **Kebo Valley Golf Club, 136 Eagle Lake Road, for a Class 3ad, three or more musicians, with mechanical amplification and dancing, as submitted by Kebo Valley Golf Club, David Closson. (Renewal)** – There being no comments, Mr. Paradis, with second by Ms. Schloss, moved to approve the special amusement permit renewal for Kebo Valley Golf Club as requested. Motion passed 6-0.
6. **Lompoc Café, 36 Rodick Street, for a Class 3ad, three or more musicians, with mechanical amplification and dancing, as submitted by Train Song, Inc., James Pike. (New)** – Chair Ruth Eveland acknowledges receipt of two letters from abutting neighbors: Adele and Rudolph Abolafia and Ursula and Peter Schertenieib, who expressed concerns over the level of noise from last year's performances. The new owner reported that he's mindful of the neighbors' concerns and he plans to have the doors and windows closed with personnel monitoring activities. Council reminded the public to call the police to report a disturbance and that there are mechanisms in place, if a violation occurs.

Mr. Paradis, with second by Mr. Jordan, moved to approve the special amusement permit for Lompoc Café as requested. Motion passed 6-0.

- B. Bridge Street** – *Review and possible approval of a Condemnation Order to clarify the Town's title to Bridge Street.* – Mr. Reed explained that an error in the 1871 layout of Bridge Street had created some question about the details of the Town's title to Bridge Street, so the Council is seeking to acquire a formal easement along the line of the existing physical improvements to Bridge Street and to discontinue the road as laid out in 1871 and taken in 1879. Neither the condemnation order, nor any discontinuance, would take effect until and unless Town Meeting were to ratify the action. There being no public comments and following a brief comment to clarify two edits submitted today by the Town Attorney, Mr. Paradis, with second by Mr. Garland, moved to adopt the Bridge Street Condemnation Order as presented and amended by the Town Attorney in his memo dated April 1, 2008. Motion passed 6-0.

Condemnation Order
Town of Bar Harbor

Bridge Street

The Bar Harbor Town Council hereby issues this Condemnation Order under 30-A M.R.S.A. §3101 and 23 M.R.S.A. §3022 and §3023 in regard to the laying out and taking of certain lots or parcels of land located in the Town of Bar Harbor as follows:

1. This condemnation is for a public use, namely to quiet the Town's title to, and ownership of, public highway and drainage easements on and across certain property hereinafter described as the "Bridge Street Easement Area" and to acquire an easement in the Bridge Street Easement Area for the laying out and widening of a town way on Bridge Street in the originally intended location of the Bridge Street easement, along with all incidental and related uses, including the construction of drainage features.
2. The Bar Harbor Town Council has determined that public exigency requires the immediate taking of the property interests described herein. In addition, the Town Council has determined that the Town is unable to purchase the property at what the Town Council deems reasonable valuation.
3. Said Town Council has determined that the property to be taken consists of the real property described in Exhibit A attached hereto and made a part hereof as if fully set forth herein.
4. Said Town Council has determined that the parties who may claim to be record owners of the property, so far as they can be reasonably determined, are identified in Exhibit B attached hereto and made a part hereof as if fully set forth herein.
5. The proposed date of taking possession of the property is the date this Condemnation Order and the accompanying Certificate of the Clerk of the Town of Bar Harbor are recorded in the Hancock County Registry of Deeds following ratification of this Order by a Town Meeting vote.
6. Said Town Council met at the time and place designated in said notice, to-wit: on the First day of April, 2008 at 7:00 p.m. at the Bar Harbor Municipal Building and heard all parties interested in the laying out and taking of said property.

Whereupon, It Is Ordered, As Follows:

- A. That the Town Council does hereby lay out, take and condemn, easements as aforesaid in the land described in Exhibit A for public purposes pursuant to 30-A M.R.S.A. §3101 and 23 M.R.S.A. §3022 and §3023.
- B. Said Town Council does hereby determine that no damages should be awarded for the quieting of the title to the highway and drainage easements across the property described as the Bridge Street Easement Area due to the long history of Town and public use of said property for highway purposes, which has resulted in the acquisition of highway and drainage easements by the Town by operation of law.
- C. That the original of this Order shall be filed with the Town Clerk who shall thereupon cause an attested copy of this Order to be served upon the aforementioned record owners of said property, together with a check in the amount of the damages awarded, if any.
- D. The Town Clerk is further ordered to prepare the certificate required by 23 M.R.S.A. §3024 and record said Certificate in the Knox County Registry of Deeds.

Dated at Bar Harbor, Maine, this First day of April, 2008.

Municipal Officers of the Town of Bar Harbor

Signature of Municipal officers

Exhibit A

Beginning at the mean high water line as defined by the National Ocean Survey (NOS) shown as station 0+00.00 on a plan entitled "ROW, Inhabitants of the Town of Bar Harbor, Right-of-way Survey Plan Bar Harbor, Maine", prepared by Patriot Land Surveys, Inc., as certified, signed, and sealed by Joseph Bertrand Peter Coffey, Maine Professional Land Surveyor number 2329, dated May 22, 2007 as revised on March 11, 2008 ("Patriot Plan"). Station 0+0.00 lies S88°00'45"W and 1644.03 feet from the NOS benchmark #1 1970 at the northeast corner of the town pier. This station also lies N29°36'13"W and 55.43 feet from a 3/4 inch rebar found on the southwesterly line of land of the Bar Harbor Tennis Club (the "Club") described in a deed recorded in the Hancock County Registry of Deeds in Book 4222, Page 205;

Thence along the northwesterly terminus of Bar Road, N79°37'13"E, a distance of 16.50 feet to the southwesterly line of land of the Club;

Thence along Page's loop wire fence remains on the southwesterly line of the Club's land, S10°22'47"E, a distance of 40.00 feet to a 5/8 inch rebar set left of station 0+40.00;

Thence along Page's loop wire fence remains on the southwesterly line of the Club's land, S10°22'47"E, a distance of 460.00 feet to a 5/8 inch rebar set left of station 5+00.00;

Thence along Page's loop wire fence remains on the southwesterly line of the Club's land through the junior West Street layout of 1874 (and any subsequent alterations), along the southwesterly lines of the following abutting land owners:

George H. Chihowski by virtue of a deed recorded in the Hancock County Registry of Deeds in Book 1505, Page 319; The MCW & RMW Revocable Trusts of 2006 by virtue of a deed recorded in the Hancock County Registry of Deeds in Book 4661, Pages 120 & 122; Jeffrey & Elizabeth Kase by virtue of a deed recorded in the Hancock County Registry of Deeds in Book 2004-Page 14; Dan H. & Pamela W. Honeywell by virtue of a deed recorded in the Hancock County Registry of Deeds in Book 3761, Page 36; Jann M. Barry by virtue of a deed recorded in the Hancock County Registry of Deeds in Book 4379, Page 114; Kimberly D. Childs & Douglas J. Michael by virtue of a deed recorded in the Hancock County Registry of Deeds in Book 2689, Page 654; James W. & Catherine Elk by virtue of a deed recorded in the Hancock County Registry of Deeds in Book 1573, Page 177; John Allgood et als by virtue of a deed recorded in the Hancock County Registry of Deeds in Book 2700, Page 102; MHL Properties, LLC by virtue of a deed recorded in the Hancock County Registry of Deeds in Book 3656, Page 16

S10°22'47"E, a distance of 525.00 feet to a 5/8 inch rebar set left of station 10+25.00;

Thence along the southwesterly line of land of MHL Properties, S10°22'47"E, a distance of 24.53 feet to the terminus of Bridge Street at the senior Cottage Street layout of 1870 (and any subsequent alterations). The Cottage Street right-of-way, however its current location lies, shall be the defining monument of said Bridge Street terminus;

Thence along the northwesterly line of the defining Cottage Street right-of-way, S77°58'48"W, a distance of 16.50 feet to station 10+50.00. This station lies

S67°43'10"W and 1597.85 feet from the NOS benchmark #3320B 2005 at the cannons of Agamont Park by the town Pier;

Thence along the northwesterly line of said defining Cottage Street right-of-way, S77°58'48"W, a distance of 16.50 feet to the northeasterly line of the Town of Bar Harbor's property known as the Oddfellows or Casino Lot (now used as a parking lot);

Thence along the Town of Bar Harbor's land (generally along the southwesterly edge of a concrete sidewalk, but not as a controlling monument) parallel to the northeasterly line of the herein described right-of-way, N10°22'47"W, a distance of 25.47 feet to a 5/8 inch rebar set right of station 10+25.00;

Thence along the northeasterly line of land of the Town of Bar Harbor, through the junior Summer Street layout of 1920 (and any subsequent alterations), and the following abutting landowners (generally along the southwesterly edge of concrete sidewalks, but not as controlling monuments) parallel to the northeasterly line of the herein described right-of-way:

Walter J. & Helen L. Norwood by virtue of a deed recorded in the Hancock County Registry of Deeds in Book 1184, Page 599; Joan C. Allen by virtue of a deed recorded in the Hancock County Registry of Deeds in Book 1538, Page 227; Superfund Site Developments, LLC by virtue of a deed recorded in the Hancock County Registry of Deeds in Book 3487, Page 328; Steven S. & Susan J. Raab by virtue of a deed recorded in the Hancock County Registry of Deeds in Book 4206, Page 304

Continuing through West Street and along Page's loop wire fence remains on the northeasterly line of land of Jean P. Smith (Book 3756-Page 229), N10°22'47"W, a distance of 525.00 feet to a 5/8 inch rebar set right of station 5+00.00;

Thence along Page's loop wire fence remains on the northeasterly line of land of Smith and that of Elizabeth D. Hodder (Book 1608-Page 428) parallel to the aforesaid northeasterly line of the herein described right-of-way, N10°22'47"W, a distance of 460.00 feet to a 5/8 inch rebar set right of station 0+40.00;

Thence along the northeasterly line of land of Hodder parallel to the aforesaid northeasterly line of the herein described right-of-way, N10°22'47"W, a distance of 40.00 feet to the NOS mean high water in a stone retaining wall benefiting said Hodder;

Thence along the mean high water line, N79°37'13"E, a distance of 16.50 feet back to the point of beginning;

Meaning and intending to take the proposed right-of-way as shown on the Patriot Plan, subject to the terminating monument of Cottage Street.

Subject to any utility easements benefiting Bangor Hydro Electric Company and the former Bar Harbor Water Company.

Directions are referenced to Maine State Plane Coordinate System East Zone Grid North (North American Datum 1983) as derived from survey grade Global Positioning System observations made on April 1, 2005. The scrivener of this description was Joseph Coffey of Patriot Land Surveys on March 13, 2008 in the 231st year of American Independence.

Exhibit B

Town of Bar Harbor Planning Board
93 Cottage Street, Suite 1
Bar Harbor, ME 04609-1400

Town of Bar Harbor
93 Cottage Street, Suite 1
Bar Harbor, ME 04609-1400

Elizabeth D. Hodder
1 Bridge Street
Bar Harbor, ME 04609

Jean P. Smith
115 West Street
Bar Harbor, ME 04609

Steven S. Raab
Susan J. Raab
112 West Street
Bar Harbor, ME 04609

Superfund Site Developers, LLC
17 Bridge Street
Bar Harbor, ME 04609

Joan C. Allen
23 Bridge Street
Bar Harbor, ME 04609

Walter J. Norwood
Helen L. Norwood
25 Bridge Street
Bar Harbor, ME 04609

MHL Properties, LLC
71 Cottage Street
Bar Harbor, ME 04609

John Allgood
69 Cottage Street
Bar Harbor, ME 04609

James W. Elk
Catherine Elk
32 Bridge Street
Bar Harbor, ME 04609

Kimberly Dawn Childs
Douglas James Michael
28 Bridge Street
Bar Harbor, ME 04609

Jann M. Barry
24 Bridge Street

Bar Harbor, ME 04609

Dan H. Honeywell
Pamela W. Honeywell
22 Bridge Street
Bar Harbor, ME 04609

Jeffrey Kase
Elizabeth Kase
20 Bridge Street
Bar Harbor, ME 04609

Trustees of the MCW & RMS Revocable Trusts of 2006
18 Bridge Street
Bar Harbor, ME 04609

George Howard Chihoski
110 West Street
Bar Harbor, ME 04609

Bar Harbor Tennis Club
111 West Street
Bar Harbor, ME 04609

C. Wharf License: Golden Anchor – *Public comment on and possible approval of a license for Golden Anchor, LC, d/b/a Harborside Marina, 55 West Street, to install five new pilings and construct 2893 square feet of additional pier.* – Following comments and closing the public hearing, Mr. Paradis, with second by Ms. Schloss, moved to approve and sign the Wharf License of Golden Anchor, LC as presented and proposed and enter it in the minutes. Motion passed 6-0.

**Wharf License
Golden Anchor, LC**

Pursuant to the provisions of MRSA Title 38, Chapter 9, Section 1022, Eben Salvatore, representing the interests of Golden Anchor, LC, applied for a wharf license for the expansion of the Golden Anchor pier on March 17, 2008 for property addressed at 55 West Street, Bar Harbor, ME 04609, Town Tax Map #104 Lot #10, said application being to construct on the north side of the existing pier a twenty-eight hundred ninety three (2893) square foot addition, and install five (5) new 3-pile dolphins as shown on the attached plan.

Upon receipt of a favorable recommendation from the Harbor Committee dated March 14, 2008, after examining the application, after Eben Salvatore's withdrawal of the footbridge shown on the submitted plan, after hearing all parties interested in said application, and after considering the testimony and all other evidence adduced at a duly noticed and advertised public hearing on Tuesday, April 1, 2008, the Bar Harbor Town Council finds:

1. That, at the Town Council meeting on March 18, 2008, Eben Salvatore, representing the interests of Golden Anchor, LC, withdrew the portion of the plan labeled "New Footbridge", and

2. That the proposed expansion of the pier and installation of new pilings to the north side of the existing pier, as shown on the attached plan would not be an obstruction to navigation; and
3. That the proposed expansion of the pier and installation of new pilings to the north of the exiting pier, as shown on the attached plan will not injure the rights of others; and
4. That the proposed expansion of the pier and installation of new pilings to the north of the existing pier, as shown on the attached plan, , will not adversely affect or impair the interest of the Town of Bar Harbor.

For the foregoing reasons, the Municipal Officers of the Town of Bar Harbor, pursuant to Title 38 MRSA Chapter 9, Section 1022, hereby grant to Golden Anchor, LC a wharf license for the 2893 square foot expansion on the north side of the existing pier and installation of five new 3-piling dolphins, as shown on the attached plan.

VI. REGULAR BUSINESS:

- A. Working Waterfront Celebration** – *Request of the Harbor Committee for permission to hold the annual Working Waterfront Celebration and Blessing of the Boats on the Town Pier on June 1, 2008.* – Mr. Garland, with second by Mr. Veilleux, moved to approve the use of the Town Pier for the annual Working Waterfront Celebration and Blessing of the Boats on June 1, 2008 as outlined in the March 21 memo from the Harbor Master. Motion passed 6-0.
- B. West Street** – *Recommendation of the Parking & Traffic Committee for denial of a request by Oli's Trolley for removal of the first designated parking space west of Main Street on the south side of West Street, to facilitate maneuvering their tour bus.* - Tabled to next meeting, April 15th.
- C. Iran War Resolution** – *Request of MDI Peace & Justice that Council place a resolution opposing the invasion of Iran on the warrant for the open Town Meeting on June 3.* – Mr. Paradis, with second by Ms. Schloss, moved that Councilor Greg Veilleux be recused because his mother in-law is a signor of the request for this agenda item. Motion passed 4-1-1 (Nay: Mr. Jordan, Recused: Mr. Veilleux). Following a brief discussion, Mr. Jordan, with second by Mr. Garland, moved to place the resolution submitted by MDI Peace and Justice on the Warrant for the June 10, 2008 Town Meeting written ballot pending review by the Town Attorney. Motion failed 2-3-1 (Nay: Mr. Paradis, Mr. Garland, Ms. Schloss, Recused: Mr. Veilleux). Similar requests in the past were placed on a town meeting warrant through the petition process. Some Councilors requested that MDI Peace & Justice return with their request in a petition format.
- D. Bridge Street** – *Review and possible adoption of a motion to begin proceedings to discontinue Bridge Street as laid out in 1871 and taken in 1879 and to set a hearing date for April 15, 2008.* – Mr. Paradis, with second by Mr. Garland, moved to begin proceedings to discontinue Bridge Street as

laid out in 1871 and taken in 1879 and to set a hearing date for April 15, 2008. Motion passed 6-0.

E. Town Meeting: June 2008 – *Review and possible approval of:*

1. *Recommendations for warrant articles* – Mr. Paradis, with second by Mr. Veilleux, moved to recommend adoption of articles C through X on the annual Town Meeting Warrant. Motion passed 6-0.
2. *Draft warrant and public hearing notice for annual Town Meeting.* – Mr. Paradis, with second by Ms. Schloss, moved to approve the draft warrant and public hearing notice for annual Town Meeting and direct staff to prepare the final draft of the warrant for Council signature at the April 15, 2008 meeting. Motion passed 6-0.

F. FY08 Budget Transfer – *Request of the Town Manager for a transfer of funds from the Town Manager's accounts to the Planning Department to allow staff to attend the upcoming Cruise Ship Symposium in Portland.* – Mr. Garland, with second by Ms. Schloss, moved to transfer \$452 from the Town Manager's "Travel – Rooms, Miles & Meals" account #1010-5846 to the Planning Department's "Travel – Rooms, Miles & Meals" account #1034-5846. Motion passed 6-0.

G. School Reorganization – *Status report by Council's representative to the Reorganization Planning Committee, Councilor Bob Garland.* – Councilor Garland reported that there was not much to report other than the legislature has another go around on LD1932, and then the governor has another turn.

H. Treasurer's Warrant – *Request of Treasurer to authorize paid bills.* – Mr. Paradis, with second by Mr. Veilleux, moved to sign the Treasurer's warrant for paid bills. Motion passed 6-0.

VII. COUNCIL COMMENTS AND SUGGESTIONS FOR NEXT AGENDA

Mr. Jordan requested, before summer, an agenda item to discuss alternative energy in the Municipal Building.

Ms. Schloss congratulated the Emerson School jazz band for another State win for their outstanding performance.

Mr. Paradis noted that the last League of Towns minutes indicated that the League was not interested in pursuing shared assessing. He thanked the Town Manager for his effort with this issue and pointed out that the idea should not die. There may be some future opportunity with the two towns that did express some interest.

Mr. Garland expressed disappointment in some of the comments in the League of Towns minutes.

Ms. Eveland congratulated the MDI Show Choir for their outstanding first place performance.

She reminded the public that nomination papers are available for Town Council seats and to feel free to contact any of the Councilors with questions or comments.

VIII. MATTERS FOR POSSIBLE EXECUTIVE SESSION: (none scheduled)

IX. ADJOURNMENT – Mr. Paradis, with second by Ms. Schloss, moved to adjourn at 8:11 p.m. Motion passed 6-0.

Paul Paradis, Secretary